

**OPINION
47-208**

March 19, 1947 (OPINION)

SCHOOL DISTRICTS

RE: Reserve Fund

Your letter of March 18 addressed to this office has been received and contents of same have been noted.

You present the following proposition upon which you desire an opinion of this office. A school district in the western part of the state has built up a substantial reserve fund. At the beginning of the school year this fund was drawn upon by the district in enable it to operate until sufficient taxes for the current year would be available. There are no delinquent taxes for any previous years in this district. By expending all the tax money which the county treasurer turned over to this district, it will be able to complete the present school term without receiving help from the Basis of Need Fund in the State Equalization Fund. The school board now desires to have the special reserve fund replenished as it should have been under section 57-1907. The district now has sufficient money being the proceeds of the payment of taxes for the current year.

Your question is, should the school district return the money to the special reserve fund?

As this office pointed out in an opinion written December 17, 1946, the special reserve fund is in fact a revolving fund or it might be called an emergency fund which may be drawn upon when collections from taxes levied for the current year or delinquent taxes for preceding years are insufficient to meet the requirements of the budget for the current year for operating expenses. But any sum thus withdrawn from the reserve fund must be repaid out of any collections of taxes levied for the current year or unencumbered delinquent taxes of previous years apportionable to the general fund of the school district.

The money now on hand in the treasury of the district consists of the proceeds of taxes collected for the current year and is sufficient out of which to replenish the special reserve fund. A school district may not expend any more money than the amount budgeted and for which levy has been made for the current fiscal year. Consequently, this district may not expend any funds from the special reserve fund in addition to the amount budgeted for the school year. It would, therefore, be the duty of the board as well as the county treasurer to see to it that the special reserve fund is replenished to the amount required by law.

Under Section 57-1907 it is the duty of the county treasurer, first to apply the proceeds of the collections of taxes to the replenishment of the special reserve fund. It follows therefore that when taxes were collected in this particular district the county treasurer should have credited such taxes to the special reserve fund until the amount withdrawn therefrom had been replenished. However,

since the school district has sufficient money on hand for this purpose, transfer should be made forthwith to the special reserve fund.

You will note that section 57-1908 provides that any school district official or any county treasurer violating the statute becomes personally liable for failure to comply with the provisions of the law relating to the special reserve fund.

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